Letter from the Government

William H. Taft IV∗

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Abstract

July 15, 1982

Articles Editor

Nova Law Review

3100 S.W. 9th Avenue

Fort Lauderdale, Florida 33315

You have written to both Secretary Weinberger and me

inviting us to comment in your law review on the issues

raised in Professor Arthur Miller’s article “Nuclear Weapons

and Constitutional Law.” This letter is in response to both

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provided.

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You have written to both Secretary Weinberger and me inviting us to comment in your law review on the issues raised in Professor Arthur Miller's article "Nuclear Weapons and Constitutional Law." This letter is in response to both invitations. We appreciate very much the opportunity thus provided.

Professor Miller's article suggests that officers of the federal government are under a constitutional duty to take action to eliminate the threat to American lives, liberty, and property posed by nuclear weapons. It is not necessary to agree with Professor Miller's constitutional analysis, much of which he himself characterizes as tentative and even far-fetched, to recognize the responsibility of government officials in this regard. Quite apart from the implicit powers and duties derived from the doctrine of raison d'état, which Professor Miller evidently views with some ambivalence,**

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** Professor Miller's ambivalence arises, I believe, from a misunderstanding of the relationship between national security in the context of international affairs and personal security. Professor Miller perceives a tension between the interests of the state in maintaining its authority and individual rights. While this tension undoubtedly exists in a domestic context, with regard to threats to individual rights by foreign countries,
there is an explicit provision in the Constitution that bears on this matter. Section 4 of Article IV provides that

"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion. . . ."

In addition, the Constitution requires both the President and Members of Congress to swear that they will support the Constitution.

These provisions together sufficiently establish the existence of the constitutional duty to reduce and, if possible, eliminate the threat that nuclear weapons pose to the individual freedom and rights of Americans set out in the Constitution. The Reagan Administration has, of course, recognized its responsibilities in this regard. Its policy has been and continues to be to deter the use of nuclear weapons first by assuring that any adversary knows that we have sufficient strength to inflict unacceptable damage in retaliation against any attack that may be made on us and, secondly, by entering into negotiations with the Soviet Union to reduce substantially the arsenals of nuclear weapons held by both that country and the United States.

Sincerely,

William H. Taft, IV

national security and personal security are interdependent: the survival of the state is what in this context preserves the individual rights secured by the Constitution. Threats from nuclear weapons arise, needless to say, only in an international context.